



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

THE POWER OF CONGRESS TO REDUCE REPRESENTATION IN THE HOUSE OF REPRESENTATIVES AND IN THE ELECTORAL COLLEGE.

BY EMMET O'NEAL.

THE exclusive right of the several States to fix the qualifications of voters is older than the Constitution. Even in Colonial times the right to vote had been regulated by the several Assemblies and not by Parliament, and this right was not surrendered when the Federal Union was formed. As the Supreme Court of the United States declared:

“The right to vote in the States comes from the States, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.”

The Constitution of the United States, therefore, does not confer on the citizen the right of suffrage. The unabridged and exclusive right of the States to fix the qualifications of voters still exists, subject only to the prohibition contained in the Fifteenth Amendment. The removal of that prohibition would leave the several States vested with their original and unlimited power to regulate and control the suffrage of their citizens.

The scheme of reconstruction adopted after the close of the Civil War, influenced necessarily by the inflamed state of public sentiment engendered by that mighty conflict, included the Thirteenth, Fourteenth and Fifteenth Amendments. The abolition of slavery speedily followed, as an expected result of the war. As repeatedly declared by the Supreme Court, and as shown by the debates in Congress during the period of its adoption, the *main purpose of the Fourteenth Amendment* was to establish the

citizenship of free negroes, which had been denied by the "Dred Scott" case, and to make all blacks, born or naturalized, in the United States, citizens of the United States.

The second section of this Amendment says:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

This section, then, confers on Congress the power to reduce the representation of a State which denies or abridges the right of any inhabitant of the State, twenty-one years old, and a citizen of the United States, to vote, except for participation in rebellion or other crime.

Is this section of the Amendment to be literally construed? Was its aim to inflict a penalty on the State which denied universal and unrestricted suffrage? Was it the purpose of the Amendment, while not undertaking to fix the qualification of voters, to condemn and punish the State which did not accord to every male inhabitant thereof, who had attained his majority, and who was not disqualified by crime, the unrestricted right of suffrage? Was the object of this amendment to change radically the whole practices of the State Governments, and to hold over a State which placed any restrictions or qualifications on suffrage the potent threat of reduced representation in the Congress and in the Electoral College? Is the State which limits its suffrage by the imposition of a property or educational qualification, or the requirement of registration, or the payment of a poll-tax, or a residence for a term of years, liable to the penalty of reduced representation under the provisions of this section?

We can but concede that an affirmative answer to these questions would voice the popular construction of the meaning and purpose of this section of the Amendment. This is abundantly established by the numerous discussions of the power of Congress

on this subject, which have appeared in the past twelve months in the press and periodicals of the country, as well as by the debates and bills introduced in Congress. The power of Congress to reduce the representation of a State which imposes any restriction on the exercise of the elective franchise, seems to be generally conceded, the expediency of such action alone being questioned or denied.

Yet, if section two of the Fourteenth Amendment should be literally construed, the anomalies which would follow would be astonishing. A State which denied the right to vote to any male inhabitant who was twenty-one years old, except for participation in rebellion or other crimes, would be liable to the penalty prescribed. Such a construction would prevent the State from denying suffrage to idiots or insane persons. It would tacitly condemn any regulations requiring registration, or the payment of a poll-tax, as a prerequisite to the right to vote. A citizen of the United States, migrating from one State to another, would be entitled to vote in a State the moment he became an inhabitant of it. Yet the constitution of Alabama, for instance, provides that every person shall reside at least two years in the State before he is entitled to vote. The laws of other States contain similar provisions. But the requirement of a residence from any male citizen of the United States, before allowing him the privilege of voting, would be abridging the right of a male inhabitant of the State, who is a citizen of the United States, to vote and would be against the policy and purpose of section two of the Fourteenth Amendment.

In speaking of the Fourteenth and Fifteenth Amendments in the "Slaughter-house" cases, Justice Miller says:

"But what we do say, and what we wish to be understood, is, that, in any fair and just construction of any section or phrase of these Amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it."

Those who assume that any fair and just construction of any section or phrase of the Fourteenth Amendment warrants the conclusion that its purpose was to invoke the penalty of reduced representation against the State which did not vest all of its

male inhabitants with unrestricted suffrage, and that such a State could only escape the consequences of exercising its power of prescribing qualifications for its voters by the leniency of Congress, have signally failed to comprehend the pervading spirit of the Fourteenth and Fifteenth Amendments, the evil they were designed to remedy, or the well-known and declared objects and purposes they sought to accomplish. The first section of the Fourteenth Amendment opens with a definition of citizenship, not only citizenship of the United States, but citizenship of the States. The definition of citizenship had been the occasion, as declared by Justice Miller, of much discussion in the courts, by the executive departments, and in the public journals. "It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union." It had been held in the "Dred Scott" case that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States.

As declared by the Supreme Court, the main purpose of this Amendment was to establish the citizenship of the negro.

The first section of the Fourteenth Amendment also recognized and established the distinction between citizenship of the United States and citizenship of the State. To be a citizen of a State, a man must reside within the State; but it is only necessary that he should be born or naturalized in the United States to make him a citizen of the United States. While this amendment declared that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, the Supreme Court has declared that the right of suffrage was not one of the privileges and immunities of citizenship before the adoption of the Amendment, that at the time of its adoption suffrage was not coextensive with the citizenship of the State or universal, and "that neither the Constitution nor the Fourteenth Amendment made all citizens voters."

In other words, while this Amendment made the negro a citizen, it did not make him a voter. The further declaration in this Amendment, that "No State shall deny to any person within its jurisdiction the equal protection of the laws," was designed, as declared by the same court, to prevent any person or class of persons from being singled out as special subjects for hostile and discriminating legislation.

Speaking of section two of the Fourteenth Amendment, the Supreme Court of the United States has declared in the case of "McPherson vs. Blacker" (146 U. S., p. 39), as follows:

"The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State. There is no color for the contention that, under the Amendments, every male inhabitant of the State, being a citizen of the United States, has from the time of his majority a right to vote for Presidential electors. The object of the Fourteenth Amendment, in respect to citizenship, was to preserve equality of rights, and to prevent discrimination as between citizens, but not to radically change the whole theory of the relations of the State and the Federal Government to each other, and of both governments to the people."

If contemporaneous history and practical construction are to be allowed their legitimate force, there is no basis, then, for the contention that section two of the Amendment authorized Congress to impose the penalty of reduced representation on a State, which, while making no discrimination against any class or race, exercised its sovereign power to prescribe qualifications for voters. Though the student can learn from the debates in Congress many reasons for the adoption of the Fourteenth Amendment, yet he can learn more from the report which the Joint Committee on Reconstruction made, when it offered the Amendment. In that report it was stated that it was doubtful whether the States would consent to surrender the power to prescribe the qualifications of voters, a power they had always exercised and to which they were attached. This was assigned as the reason for not vesting Congress with the right to regulate or control the suffrage. The committee concluded that political power should be based in all States, exactly in proportion as the right of suffrage should be granted, "*without distinction of color or race.*" Leaving the whole power of regulating the suffrage with the people of each State, as the committee declared, the creators of the Amendment believed that the advantages of increased political power would be an inducement to allow all to participate in its exercise.

The debates in Congress, and the declared purpose of its authors and advocates, establish beyond controversy that the primary purpose of the Fourteenth Amendment was to protect the negro race, and to force negro suffrage upon the South, by means of the penalty of a loss of its representation.

Since the adoption of the Fourteenth Amendment, while numerous bills have been introduced in Congress seeking to enforce the penalty prescribed by section two of the Amendment, it was not until the national campaign of 1904, that any political party demanded the enforcement of this penalty. In the platform adopted at Chicago by the Republican National Convention is found the following:

"We favor such Congressional action as shall determine whether, by special discriminations, the elective franchise in any State has been unconstitutionally limited; and, if such be the case, we demand that representation in Congress and in the Electoral College shall be proportionally reduced, as directed by the Constitution of the United States."

Since the convening of the last Congress, numerous bills have been introduced in that body, seeking to carry out this pledge of the Republican platform.

This section of the platform, moreover, is worthy of careful consideration, for it is the latest, most deliberate and authoritative expression of the views of the dominant political party on this important subject. It clearly and boldly presents the issue to the American people.

What is meant by "the unconstitutional limitation" by "special discrimination" by any State of the elective franchise? As we have shown, while the Fourteenth Amendment made the negro a citizen, neither it nor the Fifteenth Amendment made him a voter. The Fourteenth Amendment did not establish *universal* suffrage, either directly or by implication. It only imposed the penalty of reduced representation on a State that denied or abridged the right of the negro to vote, on account of his race or color. Construed, then, in the light of the Amendments, and following the construction of the Amendments made by the highest judicial tribunal of the Republic, the clear meaning of the Republican platform is a demand that Congress shall determine whether any State has denied or abridged the right of a citizen of the United States to vote, on account of his race, color, or previous condition of servitude, in violation of the Fifteenth Amendment. If Congress should determine that such denial or abridgement of the suffrage has occurred, the demand is, further, that the representation of such State shall be reduced by Congress in the House of Representatives and in the Electoral College. The pertinent and important inquiry, then, is, Has Con-

gress the constitutional power to reduce the representation of a State in Congress and the Electoral College, if it should reach the conclusion that a State has denied or abridged the right of the negro to vote, on account of his race, color, or previous condition of servitude?

An answer to this important question requires a brief review and *résumé* of the history and purposes of the Fourteenth and Fifteenth Amendments.

The Fourteenth Amendment did not undertake, directly or by implication, to interfere with the rights of the States to regulate and control the suffrage of their citizens. If a State denied to the negro as a race the right of suffrage, the penalty which Congress could impose was a reduction of representation in Congress and in the Electoral College. Instead of denying, the Fourteenth Amendment recognized, the unabridged power of the State to deny the right of suffrage to the colored race, by the imposition of a penalty for its refusal. If this Amendment had denied the right of the States to refuse the elective franchise to the negro race, the imposition of a penalty for such refusal would have been unnecessary, for such a refusal would have been void. The authors and supporters of this Amendment had hoped and confidently expected that the penalty provided would prevent any State from denying to the negro, as a race, the elective franchise, on account of the reduced representation which might follow. In a recent work on the Constitution of the United States, Thorpe, after reviewing the debate on this passage of this Amendment, concludes with the following language:

"The Fourteenth Amendment established the citizenship of the negro and was intended to secure him the benefit of his freedom. But still it left him without the right to vote. Its supporters had hoped that the Southern States would be induced to grant him this right because of the increased representation they would thereby secure in Congress. This hope was not realized, and the Republicans determined to take away from the States the power to discriminate against any citizen of the United States as a voter, on account of his race, color, or previous condition of servitude."

Embittered by the failure of the South to grant the negro the right to vote, Congress resolved to transfer to itself the power to regulate the suffrage in the States. It is a matter of history that, had the Fifteenth Amendment finally passed as amended in the Senate, the States would have been stripped of all power, and

Congress alone would have dominated all elections, and regulated the qualifications of voters. Senator Williams, of Oregon, did propose to amend the original resolution offered by Boutwell by asserting the power of Congress to regulate the right to vote, and keeping the whole matter within the control of the National Government. But the entire Democratic vote resisted this radical innovation, and the Republican leaders were forced to agree to their views. Finally, Wilson, of Massachusetts, offered a substitute to the effect that no discrimination should be made in the right to vote, in any State, on account of race, color, nativity, property, education, or religious creed, and this substitute passed by a small majority. The House, however, declined to agree to this substitute, and the resolution was finally passed in the form in which the Amendment now appears, but only after repeated efforts had been made so to amend it, as to make every citizen, twenty-one years of age or over, a voter, not to be disfranchised except for crime. The history of this Amendment shows that, while the Democratic minority were unable to defeat a suffrage measure, they did determine its form, and did compel the majority so to word the Amendment as to recognize the sovereignty of the States, and to practically continue in the States the right to regulate the elective franchise.

The close vote, however, by which the proposition to transfer to Congress the control of the suffrage was defeated, shows by what narrow margin, the courage and fidelity of the opponents of the centralizing tendencies of the times prevented an innovation which would have fettered and degraded the State governments, by subjecting them to the control of Congress, in the exercise of a power, theretofore universally conceded to them, of the most fundamental character. So radical an innovation, if accomplished, would have changed the very form of our government.

The debates in Congress and the decisions of the Supreme Court established the following propositions:

1. The Fourteenth Amendment, while it made the negro a citizen, did not make him a voter, or deny the right of the State to exclude him as a race from participation in the elective franchise. As recently stated by the Supreme Court in the case of "*Pope vs. Williams*" (193 U. S., p. 632):

"The privilege to vote in any State is not given by the Federal Constitution, or by any of its Amendments. It is not a privilege springing

from citizenship of the United States. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, *to be exercised as the State may direct and upon such terms as it may deem proper, provided of course no discrimination is made between individuals in violation of the Federal Constitution.*"

2. The second section of the Fourteenth Amendment did not vest in Congress the power to reduce the representation of a State, which had regulated the suffrage in any manner it saw proper, provided the regulations were uniform, and did not discriminate against individuals on account of race, color or previous condition of servitude.

There is no authority for the contention that the Fourteenth Amendment sought to establish universal suffrage.

3. The Fifteenth Amendment simply invested the citizens of the United States with the right of exemption from discrimination, in the exercise of the elective franchise, on account of race, color or previous condition of servitude. Any action of a State, not directed by way of discrimination against the negro as a class, or on account of race, does not come within either Amendment.

These propositions of law, sustained by the highest judicial authorities, justify the assertion that there is no limitation on the sovereign power of the State to impose such restrictions or qualifications on the suffrage of its citizens as it may deem proper, which are not directed in hostility to the negro as a race, and that such regulations when tested by judicial construction will be upheld. As declared in the case cited above:

"A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native-born citizens should be permitted to vote."

Before the passage of the Fifteenth Amendment, the former slaveholding States had the power to confine the suffrage to the white race, and accept the penalty of reduced representation, if imposed by Congress. The willingness of the South to accept reduced representation, rather than risk the horrors and profound degradation which would follow making a race of ignorant slaves their voters and lawgivers, their judges and representatives, was the primary cause that induced the passage of the Fifteenth Amendment. This Amendment withdrew from the States the

power to discriminate against the negro on account of his race, in the exercise of the elective franchise. After its passage, no State could confine its voting population to the white race alone. As declared by the Supreme Court:

"Beyond question, the adoption of the Fifteenth Amendment had the effect in law to remove from the State constitutions, or render inoperative, that provision which restricts the right of suffrage to the white race."

The Fifteenth Amendment in effect repealed that portion of the Fourteenth Amendment which recognized the unlimited power of the States to control suffrage, and to limit the elective franchise to the white race. Any discrimination by a State, by way of denial or abridgement of the right to vote, on account of race, color or previous condition of servitude, was rendered inoperative and void by force of the operation of the Fifteenth Amendment. No Congressional legislation was necessary; the amendment was self-executing without ancillary legislation.

It follows, therefore, that the passage of the Fifteenth Amendment withdrew from Congress the constitutional power to reduce the representation of a State on account of any legislation which discriminated against the negro as a voter on account of his race. If a State passed a law which violated the provisions of the Fifteenth Amendment, such a law was unconstitutional and void. If the law was void, it could not deny or abridge the right of the negro to vote. By what authority, then, can Congress reduce the representation of a State for enacting, by its constitution or by statute, laws which discriminated against the negro in the exercise of elective franchise on account of his race or color—laws which, by the operation of the Fifteenth Amendment, are void *ab initio*; which possess no more force or effect than if they had never been written on the statute-book? A State law which contained such discrimination would be void; and, when tested in any court, State or Federal, would be so declared.

This doctrine has been recently declared in the case of "*Giles vs. Teasley*" (193 U. S., p. 146). In that case, the complaint alleged that the provisions of the Alabama State constitution were repugnant to the Fifteenth Amendment. Demurrers being filed, the court held that, if the provisions of the constitution of the State were repugnant to the Fifteenth Amendment, they were

void, that the Board of Registrars appointed thereunder had no existence and no power to act, and would not be liable in an action for damages for the refusal to register.

If the constitution of Alabama is in violation of the provision of the Fifteenth Amendment, it is void, and would furnish no obstacle to the exercise of the right of suffrage by the negro. Congress could not reduce the representation of Alabama for disfranchising the negro, when by operation of law the disfranchisement did not exist.

The demand of the Republican platform, a demand from a party which received the endorsement of the people in the last national election, is that Congress must determine whether a State has passed a law in violation of the Fifteenth Amendment. It is clear that Congress can only decide this question by exercising judicial functions, by converting itself into a court, and sitting in judgment on the constitutionality of the laws of a sovereign State of the Union. Having usurped judicial functions, having reached the conclusion that the suffrage laws of a State were unconstitutional, that the negro as a race was disfranchised on account of color, the next step which is demanded is that a reduction shall be made in the representation of the State in the lower house of Congress and in the Electoral College. The programme of usurpation disclosed by the demands of this platform should arouse the serious and earnest consideration of the country. Well may it be asked, What reason could be given for such a reduction in representation, if Congress should decide to make it? What would be the offence of which the State was guilty, which would justify Congress in stripping it of its sovereign power and lessening its influence in the councils of the nation? The only answer could be that the State had passed laws which, by the express terms of the Fifteenth Amendment, were void and inoperative; which, in the language of the Supreme Court, "*have no existence*"—laws which left the negro, possessing the requisite qualifications, the same right to vote as the white man.

In other words, the exercise of the power claimed for Congress, by the demands of the Republican platform, would put Congress in the singular attitude of reducing the representation of a State for passing a void law. Suppose Congress, in the exercise of its assumed power, should decide that a State law on suffrage was

repugnant to the Fifteenth Amendment, and should proceed to reduce the representation of that State, and the Supreme Court should declare the law to be valid, and constitutional—which decision would control, the decision of Congress, or the decision of the highest legal tribunal in the country?

The Constitution of the United States provides that the judicial power of the United States shall be vested in the Supreme Court. This judicial power, in the language of the Constitution, “extends to all cases in law and equity arising under the Constitution, the laws of the United States, or to controversies between a State and its citizens.” Yet, if the asserted power of Congress to sit in judgment on the constitutionality of the laws of the States in reference to suffrage, has any existence or warrant of law, its effect would be to strike down the line of demarcation which obtains between the three great departments of Government. The courts would be stripped of their power to expound and enforce the laws, and in their stead would be substituted a partisan Congress, obeying the exigencies and demands of party necessity rather than the rules of law; vested with judicial functions, and made the final judge of the validity of the laws of the States; clothed with arbitrary power to reduce the representation of the States and lessen their influence in the House of Representatives and in the Electoral College. The power of the courts to determine great constitutional questions would be transferred to a partisan Congress, and the legislative department of the Government would usurp the functions of the judiciary.

The courts of the country are fully competent to protect the negro in all his rights of suffrage, by rendering inoperative any hostile or discriminating legislation, in violation of the Fifteenth Amendment. The radical doctrine now asserted is that a State can be stripped of its power, punished and degraded for passing laws which, by operation of the Fifteenth Amendment, are absolutely void. Fortunately for the country, this dangerous doctrine has no warrant or support in the Constitution, and was repudiated and denied by the Congress that framed the Fifteenth Amendment. It was denounced then as an effort to subvert our form of government, and convert it into a single, centralized and consolidated government, in which the separate existence of the States would be entirely absorbed. It would establish an unqualified despotism in place of a Federal Union of coequal States.

The power of Congress to reduce representation in the House of Representatives and in the Electoral College, under the provisions of the second section of the Fourteenth Amendment, could only arise when a State abridged or denied the right to vote on account of *race, color, or previous condition of servitude*. Until the passage of the Fifteenth Amendment, the State possessed such power. It does not now exist. The Fifteenth Amendment, in effect, repealed that portion of the Fourteenth Amendment which authorized or recognized the power of the States to limit the suffrage to the white race, and hence necessarily withdrew from Congress the power it possessed to reduce representation. Of course, the Amendment might still afford a remedy "for a case, supposed by Madison, where treason might change a State government from republican to despotic, and thereby deny suffrage to the people."

The Fourteenth Amendment was in the nature of a threat. It said to the former slaveholding States: "Unless you include the negro among your electors, Congress will reduce your representation." The South answered that she would consent to the surrender of her power in the councils of the nation rather than submit to the unspeakable horrors, the humiliation and degradation which would follow the rule of an inferior race, from whose limbs the shackles of slavery had been struck in hot and vengeful haste, and who without previous preparation had been clothed with all the responsibilities of citizenship. The dominant party that controlled Congress, bitterly disappointed at the attitude of the South, replied with the Fifteenth Amendment, saying in effect to the South: "Since you will not accord suffrage to the negro, we now prohibit you by a constitutional Amendment from abridging or denying the right of the negro to vote on account of his race or color; we no longer threaten you with reduced representation if you fail to carry out our settled policy. *We command you to make no discrimination against the negro as a race in your suffrage laws.* You can no longer accept the alternative of negro suffrage or reduced representation, and we leave no field for the provisions of section two of the Fourteenth Amendment. Congress cannot reduce your representation because you are without power to abridge the right of the negro to vote on account of his race. Such an abridgement would be void by the mere operation of the Fifteenth Amendment, without any ancillary legislation."

Keeping, then, steadily in view the established fact that the Fifteenth Amendment in effect repealed and nullified section two of the Fourteenth Amendment, which authorized Congress to reduce representation for a denial or an abridgement of suffrage to the negro race on account of race or color, the Southern States, which, in the exercise of their sovereign and unquestioned power to regulate and control the suffrage of their citizens, have been impelled by a solemn conviction that the preservation of their civilization demanded that they prevent a recurrence of the horrible misrule, anarchy and corruption which followed unrestricted negro suffrage, need have no apprehensions of a reduced representation. Having violated no provision of the Federal Constitution, but only exercised a right they reserved when the Federal Union was formed, the States of the South, with no word of apology on their lips—not in the attitude of suppliants asking for mercy or appealing to the clemency of the dominant political party—can with calm and assured confidence rest their defence on the bedrock of the Constitution.

The South alone is competent to solve the serious problems which were created by the emancipation and enfranchisement of the negro race,—to solve them justly, permanently, and with such wisdom as is possible to the finite mind. And, while it is to be hoped that the conservative sentiment of the country will prevent any serious effort being made to put into force and effect the repudiated policy of Congressional control of the suffrage,—to revive sectional animosity and rekindle race antagonisms,—yet the States of the South which have reformed their suffrage laws are sustained by the confident assurance that they have only exercised powers never surrendered to the Federal Government, powers essential to the preservation of their local governments from misrule and virtual anarchy.

The Southern States can place their reliance, not on partisan majorities in Congress, not on the shifting sands of political expediency, not on the support of political allies, or the endorsement of the conservative and intelligent sentiment of the country, but rather on that supreme judicial tribunal of the Republic, which has always “held with a steady and an even hand the balance between State and Federal power.”

EMMET O'NEAL.